

## Internal Revenue Service

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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July 20, 2011

## LEGEND

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

State A =

Date 1 =

Date 2 =

Date 3 =

Year =

Dear :

This letter is in response to your March 23, 2011, letter, supplemented by your May 18, 2011, letter, requesting that the Commissioner make a determination under §1.1502-75(b) of the Income Tax Regulations that Sub1 joined in the making of the initial consolidated return filed by Parent Group for the taxable year ending on Date 3. The information submitted is summarized below.

#### SUMMARY OF FACTS

Parent is a State A corporation and a calendar year taxpayer that was newly formed on Date 1 for the purpose of acquiring all the stock of Sub 2, an unrelated State A corporation. On Date 1, Parent incorporated Sub 1, also a State A corporation. On Date 2, Sub 1 acquired all the stock of Sub 2 for cash and debt (the "Acquisition"). The Acquisition was accomplished through a reverse cash merger of a transitory subsidiary of Sub 1 into Sub 2, with Sub 2 surviving.

Immediately before the Acquisition, Sub 2 was the common parent of an affiliated group of corporations (the "Sub 2 Group") that consisted of Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, Sub 8, Sub 9, and Sub 10. All members of the Sub 2 group were calendar year taxpayers. After the Acquisition, Parent became the common parent of a new affiliated group of corporations (the "Parent Group"), and Parent subsequently filed a consolidated Form 1120 for Year.

With the exception of Sub 1, all members of the Parent Group acted consistently with treating the period ending on Date 3 as the first year of consolidation for the Parent Group. That is, Parent's consolidated Form 1120 included all items of income, gain, deduction, loss, and credit for Parent and Sub 2 through Sub 10 for the period they were members of the Parent Group; the Form 851 attached to the return included each of Sub 2 through Sub 10 as subsidiaries; and each of Sub 2 through Sub 10 filed a Form 1122.

With respect to Sub 1, it did not file a separate return, did not file a Form 1122, and was not included on the Form 851. However, it did not have any items of income, gain, deduction, loss, or credit, and thus there was no failure to include any such items on the consolidated return as required by §1.1502-76(b).

Continuously from Year until the present, with the exception of Sub 1, all members of the Parent Group were treated consistently as members of the Parent consolidated group (i.e., all their items of income, gain, deduction, loss, and credit were included on each Parent Group return, no member filed separate returns, and all members were included on each Form 851).

## REPRESENTATIONS

Parent has made the following representations:

- (a) Parent and each of Sub 1 through Sub 10 were eligible to file a consolidated Federal income tax return, with Parent as the common parent, for the taxable year ending on Date 3.
- (b) For the taxable year ending on Date 3, but for (i) the failure to file Form 1122 by Sub 1, and (ii) the failure to include Sub 1 on the Form 851 attached to the Year return, Parent and its affiliated subsidiaries would have properly filed a consolidated return that included all of the members of the Parent Group.
- (c) Sub 1 had no items of income, gain, deduction, loss, or credit for the taxable year ending on Date 3, and for all taxable years thereafter.
- (d) For the taxable year ending on Date 3, and for all taxable years thereafter, the Parent Group's members reported all of their items of income, gain,

deduction, loss, and credit on timely filed U.S. consolidated Federal income tax returns for the Parent Group.

- (e) None of the items for any member of the Parent Group for the taxable year ending on Date 3, and for all taxable years thereafter, was reported on a separate return.
- (f) For the taxable year ending on Date 3, and for all taxable years thereafter, all of the Parent Group's subsidiaries except Sub 1 were included on the Forms 851 attached to the U.S. consolidated Federal income tax returns filed by the Parent Group.
- (g) For the taxable year ending on Date 3, and for all taxable years thereafter, the Parent Group's members intended to report all of their income and deductions on timely filed U.S. consolidated Federal income tax returns for the Parent Group, and did not report any of their items for this period on separate returns.
- (h) The failure to include Sub 1 on the Form 851 attached to the Parent Group's Year U.S. consolidated Federal income tax return, and the failure of Sub 1 to file Form 1122 for the Year return, was due to inadvertence.

#### APPLICABLE LAW

Section 1.1502-75(a)(1) provides, in part, that an affiliated group of corporations that did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation that has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under §1502, in accordance with §1.1502-75(b). If a group wishes to exercise its privilege of filing a consolidated return, such return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's tax return.

With regard to a corporation's consent for a group's first consolidated year, §1.1502-75(b)(1) provides, as a general rule, that the corporation's consent shall be made by such corporation joining in the making of the consolidated return for such year. A corporation shall be deemed to have joined in the making of such return if it files a Form 1122 in the manner specified in §1.1502-75(h)(2).

Section 1.1502-75(h)(2) provides that if a group wishes to file a consolidated return for a taxable year, a Form 1122 must be executed by each subsidiary. For taxable years relevant to this ruling request, the group must attach to the consolidated return for the taxable year either executed Forms 1122 or unsigned copies of the completed Forms 1122 (and retain the signed originals in its records in the manner required by §1.6001-

1(e)). Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Section 1.1502-75(b)(3) provides that if any member has failed to join in the making of a consolidated return under either §1.1502-75(b)(1) or (b)(2), then the tax liability of each member of the group shall be determined on the basis of separate returns unless the common parent corporation establishes to the Commissioner's satisfaction that the failure of such member to join in the making of the consolidated return was due to a mistake of law or fact, or due to inadvertence. In such case, such member shall be treated as if it had filed a Form 1122 for such year for purposes of §1.1502-75(h)(2), and thus joined in the making of the consolidated return for such year.

## RULING

Based solely on the information submitted and the representations made, we rule that for purposes of §1.1502-75(h)(2), Sub 1 shall be treated as if it had filed a Form 1122 with Parent's consolidated Federal income tax return for the taxable year ending on Date 3, and thus shall be treated as having joined in the making of the consolidated return for such year (§1.1502-75(b)(3)).

Within 45 days of the date of this letter, Parent shall file amended returns for the taxable year ending on Date 3, and all subsequent years necessary, to include Sub 1 on Parent's Form 851.

## PROCEDURAL STATEMENTS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of any other aspect of any transaction or item discussed or referenced in this letter, or about the tax treatment of any condition existing at the time of, or effects resulting from, any transaction or item that is not specifically covered by the above ruling.

The ruling contained in this letter is based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the taxpayer's ruling request. Verification of the information, representations, and other data may be required as part of the audit process.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to each Federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this

requirement by attaching to the return a statement that provides the date and control number of this letter ruling.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: